Testimony of Rosemary Cambra, Chairwoman, Muwekma Ohlone Tribe
March 31, 2004

Good Morning Mr. Chairman and Members of the Oversight Hearing:

Mr. Chairman, my name is Rosemary Cambra and I carry several badges of honor in Indian Country. I am the elected Chairwoman of the Muwekma Ohlone Tribe of the San Francisco Bay region since 1984 and I am the Co-Chair of the Recognition Task Force for the National Congress of American Indians (NCAI). I also had the good fortune to work on the Recognition Task Force for the Congressionally created Advisory Council on California Indian Policy between 1994 and 1998.

As you can tell by my commitment, Mr. Chairman, I am a person deeply concerned about the justice issues not only confronting my tribe, but the plethora of issues confronting the many disenfranchised historic tribes throughout this country that were either previously recognized or whom fell through the administrative cracks, thereby rending both groups as Unacknowledged by the Secretary of Interior today.

Today I want to speak on four points. The first is my involvement as co-Chair of the Recognition Task Force for NCAI. The second reports upon the implications of ACCIP reports submitted to the Congress in 1998. The third address to long, painful and costly efforts that my Tribe has been engaged in both prior to and during the Recognition Process and the adverse ramifications for my people. And lastly, I want to discuss about the conflict of interest and violations under the Administrative Procedures Act by both BAR staff and DOI legal Council.

NCAI Recognition Task Force

Since 2001, I have had the honor to serve as co-Chair on the NCAI Recognition Task Force. My fellow co-Chair is the Honorable Mr. Ken Hansen, Chairman of the Samish Tribe from the State of Washington, which suffered for over 20 years in the BAR Process. Together, Mr. Hansen and myself, along with a cadre of devoted Native Americans and non-Native professionals are working towards the development of a meaningful alternative to the arduous, disheartening, painful and obviously untenable Federal Recognition process as currently executed by the Office of Federal Acknowledgement (previously called the BAR).

During the course of these past several years the NCAI Task Force has heard the testimonies from many tribal groups expressing their frustration over the near insurmountable costs (in the millions) necessary to complete the BAR process, the enormous amount of time waiting in bureaucratic limbo, the non-responsiveness by and negative attitudes of OFA/BAR staff, and the obstacles that the regulations pose relative to the unique historical circumstances surrounding that particular petitioning tribal group.

As a result of this effort the NCAI is trying to help formulate suitable alternatives that takes the Recognition Process out of the BIA/OFA and supports the creation of a

commission as expressed in the many bills considered since 1989 and specified in Senator Campbell's Bill SB 611. Other alternatives includes legislation for those tribes that have demonstrated that they were previously recognized and whom were never terminated by any Act of the Congress as in the case of the restoration of the Tlingit and Haida Tribes of Alaska in 1994 (see H.R. 4180) or through the Federal Court system.

As a result of the above, these issues hearken back to what Bud Shapard, the retired Bureau Chief of the Branch of Acknowledgement and Research had stated in his testimony before the Congress with regards to the then proposed HR 3430 Bill. Shapard stated that:

> …
> After fourteen years of trying to make the regulations which I drafted in 1978 work, **I must conclude that they are fatally flawed and unworkable**. They take too long to produce results. They are administratively too complicated. The decisions are subjective and are not necessarily accurate. The criteria are limited in scope and are not applicable to many of the petitioning groups which are in fact, viable Indian tribes. ... .
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> …. To continue to operate under the present regulations or any legislative approximation will not resolve the question of unrecognized Indian tribes in this country.
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> The present regulations can not be revised, fixed, patched, dabbled with, redefined, clarified or administered differently to make them work. Additional money, staff, computer hardware, or contracts with outside organizations will not solve the problem. The problem lies within the regulations.
>
> In short, the regulations should be scrapped in their entirety and replaced with a simpler, less burdensome, and more objective solution. They should be administered by an independent agency … .
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> The essential element, the bottom line key to any solution to the question of serving unrecognized Indian tribes falls directly on the Congress. If there is to be any sort of permanent answer, Congress must spell out in unmistakable terms who the United States will serve as Indians and Indian tribes." …

These words from former Branch Chief Shapard still ring today as they did 14 years ago and even with his testimony, little has changed in the Recognition process. Bills have been threatened to be introduced by concerned Congressional representatives to remove the process from the BIA, however, the burden on the tribes have not been alleviated, but instead have become increasingly more difficult and politicized.

Advisory Council on California Indian Policy (ACCIP)

As you know, the Advisory Council on California Indian Policy was created through the passage of H.R. 2144 and was signed into law by President Bush in October 1992. Under President Clinton, the ACCIP's council was in place by 1994, and having authorization to spend public moneys, the ACCIP held hearings around the state addressing the critical issues confronting the California Indians. The ACCIP finalized their findings in a series of reports, and submitted them in 1998, as mandated by the Congress. It has now been over five years since those reports were issued to the Congress and since then, the Congress appears to be totally mute on any response in addressing those critical issues confronting California tribal groups.

In those ACCIP reports, it was estimated that approximately 80,000 California Indians (many of whom have BIA numbers) currently have no legal standing because their tribes, although never formally "Terminated" by the Congress, no longer appear on the List of Federally Acknowledged Tribes (see HR 4180). Presently, these historic tribal groups are no longer Federally Acknowledged by the Secretary of Interior due to dereliction of duty, neglect and gross mismanagement by the BIA. Since the revisions of the Acknowledgment regulations (25 CFR Part 83) in 1994, at least two of these California tribal groups, the Muwekma Ohlone Tribe and Tsnungwe Council, have obtained formal determinations of "previous unambiguous Federal recognition" from the Office of Federal Acknowledgment (OFA). In fact since 1996 no other tribe has been issued such a determination, and in fact the OFA has decided to eliminate such determinations under the end of the review process. Previous Recognition was written into the revised regulations to supposedly lessen the burden of a tribe. With the elimination of previous recognition during the Technical Assistance phase, the OFA has ensured that tribes will indeed be once again burdened with their research.

In 1998, the ACCIP made the following statement with regards to several of the previously recognized tribes in California:

> "The Dorrington report provides evidence of previous federal acknowledgment for modern-day petitioners who can establish their connection to the historic bands identified therein. Clearly, the BIA "recognized" its trust obligations to these Indian bands when it undertook – pursuant to the authority of the Homeless California Indian Acts and the Allotment Act –to determine their living conditions and their need for land. The fact that some were provided with land and others were not did not diminish that trust.
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> "Among those California Indian groups that have petitioned for federal acknowledgment, there are several who can trace their origins to one or more of the bands identified in the Dorrington report. **The Muwekma Tribe** is one whose connection to the **Verona Band** has been recently confirmed in a letter from the BAR. …"

In that final report eight other tribes were also identified: These tribes are the Dunlap Band of Mono Indians, Kern Valley Indian Community, Tinoqui-Chalola Council, American Indian Council of Mariposa County, Yokayo, Shasta Nation, Hayfork Band of Nor El-Muk Wintu Indians and Tsnungwe Council. In 2000, Congressman George

Miller formulated the California Tribal Status Clarification Act. As a potential follow up to the ACCIP recommendations, in Title II of that proposed Act the following tribal groups were included for restorations as previously recognized tribes: Lower Lake Koi, Muwekma Ohlone Tribe, Tsnungwe Council and Dunlap Band of Mono Indians. That bill never got out of committee. Since then nothing has come out of the Congress that addresses the recognition issues confronting the previously recognized tribes of California, with the exception of the restoration of the Graton Rancheria in 2002.

Muwekma Ohlone, A Previously Recognized Tribe and its Quest For Restoration

Mr. Chairman, as you may already know, the Muwekma Ohlone Tribe was recognized under the series of Acts enacted by the Congress beginning in 1906 to secure homesites for the landless Indians of California. Our tribe was identified in special Indian censuses and we became known as the Verona Band of Alameda County. Our tribe fell under the jurisdiction of the Reno and later Sacramento agencies and through the dereliction of duty by Superintendent Dorrington, no land was ever purchased for out people. Nonetheless, we still maintained ourselves as a landless tribe. Our men and women have served in the United States Armed Forces from World War I to the present conflict in Iraq and our men are buried in the Golden Gate National Cemetery.

In March 1989, the Muwekma Tribal Council submitted a letter of intent to petition (#111) the Federal Government for acknowledgment. The following month on April 25, 1989, out Tribal Council received a response from the BIA Tribal Government Services acknowledging receipt of our letter.

In that letter the Act Chief of Tribal Services informed our council that "Because of the significance and **permanence** of acknowledgment as a tribe, the process of evaluation is a lengthy and thorough one." Mr. Chairman, I want to point out the word "permanence." If I'm not mistaken permanence means something "intended to last indefinitely without change."

When Muwekma had obtained its determination of "Previous unambiguous Federal Recognition" in 1996, my Tribal Council had the audacity to ask the BIA the following question. If we are a previously recognized tribe and we were never terminated by any Act of the Congress, how did we lose our "permanent" Recognized status? And the BIA could not and would not answer our question until we went to court. In 1998, Muwekma was placed on Ready Status and we realized that we were the only tribe with previous recognition. By our accounting, it would have taken the BIA approximately 20 or more years before they would look at our petition. The Tribe decided to sue the DOI and 1999 submitted a complaint before the U.S. District Court in D.C. The result of which was that the Court found the BIA in violation of APA and Justice Urbina stated that two years wait was too long. This action challenged the BIA's control over this process and we have paid dearly for this. The overall federal acknowledgment process including the research for the petition, the trips to Washington, D.C. and the lawsuit has cost my tribe several millions of dollars.

On September 9, 2002, the OFA/BAR denied extending Acknowledgment to my tribe even though we had submitted evidence for each decade under each criterion. Although the BIA was predisposed to reject our petition, they never once refuted any of the evidence that we submitted. They also failed, as promised in their response to Justice Urbina in our lawsuit; to explain how our Tribe lost it's Acknowledged status. Also, we discovered that they never referenced 87.6 (d) reasonable likelihood of the facts when reviewing our petition.

The BIA did however conclude that our 100% of members have demonstrated their descent from a **historical tribe** the Verona band of Alameda Council and that the Congress never terminated us.

When we started the Recognition process in 1984, there were around eighteen original members of the Verona Band alive, today there are only three. Today there are over 400 members enrolled in our tribe all of whom are directly descended from the Verona Band.

The Federal Acknowledgment Process clearly constitutes a war of attrition against the many disenfranchised tribal groups that have been and continue to be adversely impacted by the very Federal governmental entity that has had fiduciary responsibility over Indian tribes.

BAR Staff and DOI Solicitor

During the course of our interaction with the BIA since 1989, we found some of them to be completely evasive, fraudulent and outright hostile. For example, in November 1995, the BAR Branch Chief contacted us and we were told to come to Washington, D.C., that our letter for previous recognition would be issued. Five of us flew into Washington and when we met with this person, we were told that no such letter existed. We complained to AS-IA Ada Deer office, which apparently took action against this individual. This individual was one of the three BAR staff assigned to our petition.

During the period of our successful lawsuit against the BIA between 1999 and 2000, we discovered that the same people who bitterly opposed our Tribe in the lawsuit, were the same individuals who made the Final Determination against the Tribe. One of these people is Scott Keep, Solicitor from Interior. Presently we have been waiting for Mr. Keep to respond to our FOIA requests since the beginning of last year. We are also waiting for him to respond to Principal Deputy Aurene Martin's request for a possible alternative review of our charted petition.

On November 7, 2001, the BAR held an "On-The-Record Technical Assistance Meeting" with representatives from my tribe. During the course of the Technical Assistance meeting one of our consultants inquired if the 1997-1998 ACCIP reports "had a bearing" on the BAR decision making process. The response by one of the BAR staff was:

> "Well, if you want us to consider the report, you really should submit it for the record. … That makes it part of the record. And, furthermore, when you submit it as part of the record, you can give us an explanation of how you think it applies.

> And the we can consider that argument and your take on how the report applies." (On-The-Record Technical Assistance Meeting page 52)

In the Final Determination the BAR staff determined to circumvent such considerations by stating:

> "Given these conclusions of the Proposed Finding under criterion 83.7(a), that the period prior to 1927 is outside the period to be evaluated and that the petitioner met this criterion during the period after 1985, **it is not necessary to respond to the petitioner's comments and arguments for those two time periods**. Neither the petitioner nor any third party challenged the conclusions of the Proposed Finding that the petitioner met the criterion before 1927 and after 1985. Therefore, the evaluation of criterion 83.7(a) for this Final Determination will review the evidence and arguments for the years between 1927 and 1985." (FD 2002 page 9)

As a result, the BAR staff avoiding reviewing and considering numerous amounts of crucial evidence that Muwekma submitted for its Final Determination. The documents that the BAR staff decided to disregard were those that dated after 1985 and before 1931 These documents included the ACCIP reports, the GAO Report of November 2001, Congressional legislation, the BAR's own report on Recognition in California, and also the Bureau's correspondences from 1918 to 1931, that demonstrated Superintendent Dorrington's dereliction of duty and disregard for Office policies and the need to purchase homesites for Muwekma and other California Tribal bands).

Based upon the above statement, the (is fact, most, if not all) Technical Assistance provided by the BAR was as useless as the treaties that were made between Indian Nations and the Government. On the one hand the BAR suggests to us to submit reports and documents for "the record," and on the other hand, although they didn't inform us during the Technical Assistance meeting, that anything submitted as evidence prior to 1927 or after 1985 **will not** be considered in the Final Determination. This is Technical Assistance *par excellence*!

Furthermore, by circumventing any evidence dating 1985 and later, the BAR simply and unilaterally decided that not only were they not going to consider the merits contained in the ACCIP reports, but they would not consider any of the Congressional legislation (e.g., HR 4180), or the BAR's own precedents and Working Paper on California Acknowledgment, or the GOA report, or even the BAR's own directive to the ACCIP with regards to Muwekma's previous Recognition.

Solutions

The Muwekma Ohlone Tribe supports alternatives to the current process. Clearly new directions such as pilot projects utilizing the expertise of University or Museum based scholars could be immediately implemented that are cost effect and non-partisan.

Finally, in the Tribe's Final Determination decision the BAR staff wrote:

> "When a Final Determination is negative, the regulations direct that the petitioner be informed of alternatives to this administrative process for achieving the status of a federally recognized tribe, or other means by which the petitioner's members may become eligible for services and benefits as Indians (25 CFR 83.10(n). … In addition, Congress may consider taking legislative action to recognize petitioners which do not meet the specific requirements of the acknowledgment regulations but, **nevertheless, have merit**." (Pages 7-8) [Emphasis added]

I am requesting of you, Mr. Chairman, to take this last BAR recommendation to heart and please introduce legislation during this session of Congress that restores the Acknowledged status to my tribe. My Elders are dying and our people just can not afford to go through such costly litigation in order to secure their rights as a tribe.

Thank you for considering these pressing issues.